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MICHAEL GRECCO PRODUCTIONS, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHAEL GRECCO PRODUCTIONS, INC., *Plaintiff*, vs. GEEKTYRANT INDUSTRIES, LLC, and DOES 1 through 10, *Defendants*.	Case No.: **COMPLAINT** *Jury Trial Demanded*

Plaintiff Michael Grecco Productions, Inc., f/k/a Michael Grecco Photography, Inc., for its Complaint against Defendant GeekTyrant Industries, LLC, and Does 1 through 10, alleges as follows:

1. This is an action for copyright infringement brought by plaintiff, the holder of all copyrights to the photographs described below, against all defendants for uses of plaintiff's photographs without its authorization or permission.

JURISDICTION AND VENUE

2. This is an action for injunctive relief, statutory damages, monetary damages, and interest under the copyright law of the United States.

3. This action arises under the Copyright Act of 1976, Title 17 U.S.C. § 101 et seq.

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 (federal question) and § 1338 (copyright).

5. This Court has personal jurisdiction over defendants because, among other things, defendants are doing business in the State of California and in this judicial district, and defendants have caused injury to plaintiff and his intellectual property within the State of California and in this judicial district.

6. Venue in this judicial district is proper, either under 28 U.S.C. § 1391(b)(1) or under 28 U.S.C. § 1391(b)(2), and (b)(3), as well as 28 U.S.C. § 1400(a).

PARTIES

7. Plaintiff Michael Grecco Productions, Inc., formerly known as Michael Grecco Photography, Inc., is a corporation organized and existing under the laws of the State of California with its principal place of business in Santa Monica, in Los Angeles County. Plaintiff is a photography agency that owns the copyright to images created by Michael Grecco, a well-known professional photographer, and that licenses such photographs to third parties on his behalf.

8. Plaintiff licenses photographs for use and distribution throughout the United States, including California.

9. Defendant GeekTyrant Industries, LLC is, on information and belief, an entity organized and existing under the laws of the State of Utah. GeekTyrant operates the web site known accessible at http://geektyrant.com. According to this website, GeekTyrant "is based where movies are made"—that is, the Los Angeles area, specifically "Burbank and Hollywood." *See* http://geektyrant.com/about/

(accessed Apr. 19, 2017). GeekTyrant holds itself out as delivering “geek entertainment news” and, through its web site, disseminates content on “movies, gaming, art, music and more” using stories, art work, and photographs. On information and belief, GeekTyrant’s web site is accessible and distributed throughout the United States and the world.

10. Defendants DOES 1 through 10, inclusive, are other parties not yet identified who have infringed plaintiff’s copyrights, have contributed to the infringement of plaintiff’s copyrights, or have engaged in one or more of the wrongful practices alleged in this Complaint. The true names of defendants 1 through 10 are currently unknown to plaintiff, which therefore sues them by fictitious names and will seek leave to amend this Complaint to show their true names and capacities when that has been ascertained.

11. Plaintiff is informed and believes and on that basis alleges that at all relevant times each of the defendants was the agent, affiliate, officer, director, manager, principal, alter ego, and/or employee of the remaining defendants and was at all times acting within the scope of such relationship, or actively participated in or subsequently ratified and adopted each of the acts alleged, with full knowledge of all the facts and circumstances, including but not limited to, full knowledge of each and every violation of plaintiff’s rights and damages to plaintiff proximately caused by such violation.

BACKGROUND FACTS

12. Plaintiff is the owner and exclusive copyright holder of photographic images (the “Photographs”) that have been registered with the United States Copyright Office, or for which complete applications, fees, and deposits for copyright registration have been submitted to and received by the Copyright Office in compliance with the Copyright Act. Copies of relevant portions of the Certificate of Registration or application receipts are attached as Exhibit A.

13. The Photographs were created at the request of plaintiff's clients, each of which was granted a license that was limited by time, by scope of use allowed, by right to sublicense, or by a combination of the foregoing.

14. Plaintiff never licensed the Photographs to defendants. Nevertheless, defendants have used, and continue to use, the Photographs on the GeekTyrant web site numerous times by prominently featuring the Photographs to promote articles and content unrelated to the Photographs themselves:

a. Photograph 1 (Martin Scorcese): found on at least three different pages of GeekTyrant's website;

b. Photograph 2 (Will Smith): found on at least 16 different pages of GeekTyrant's website;

c. Photographs 3-4 (X Files): found on at least five different pages of GeekTyrant's website.

15. As of the filing of the Complaint, the Photographs were still in use on the GeekTyrant web site.

16. Defendants published the Photographs without any authorization or permission from plaintiff to do so.

17. Although defendants purport to be in the business of delivering news, their unauthorized use of the Photographs does not qualify as fair use:

a. The use is commercial in nature—that is, to enhance the overall content on GeekTyrant's web site and thus contribute to page views and "clicks." The use is not transformational at all. And there is no criticism, comment, news reporting, teaching, scholarship, or research about the Photographs themselves; there is only news reporting about the subjects of the Photographs.

b. The Photographs are highly creative, distinctive, and valuable. Some of the Photographs have been featured prominently in national news magazines.

c. Defendants have used the entirety of the Photographs, not just a small portion.

d. Defendants' unauthorized use harms the existing or future market for the original Photographs, either by displacing the original or devaluing future licensing opportunities.

18. On information and belief, at the time that defendants published the Photographs, it knew or should have known that it did not have authorization or permission from plaintiff to do so.

19. Defendants did not disclose its unauthorized uses of the Photographs to plaintiff or seek permission to use the Photographs. But for plaintiff's discovery of defendants' authorized uses, their infringements would still be concealed.

CLAIM ONE

(For Copyright Infringement – Against All Defendants)

20. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth here.

21. The foregoing acts of defendants constitute infringement of plaintiff's copyrights in the Photographs in violation of 17 U.S.C. §§ 501 et seq.

22. Plaintiff suffered damages as a result of defendants' unauthorized use of the Photographs.

23. Plaintiff is informed and believes and on that basis alleges that defendants' acts of copyright infringement, as alleged above, were willful, intentional, and malicious, which further subjects defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to $150,000 per infringement. Within the time permitted by law, plaintiff will make its election between actual damages and statutory damages.

CLAIM TWO

(For Vicarious and/or Contributory Copyright Infringement – Against All Defendants)

24. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth here.

25. Plaintiff is informed and believes and on that basis alleges that defendants knowingly induced, participated in, aided and abetted in, and profited from the unauthorized reproduction and/or subsequent distribution of the Photographs.

26. Defendants, and each of them, are vicariously liable for the infringement alleged above because, on information and belief, they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct.

27. By reason of each of the defendants' acts of contributory and vicarious infringement as alleged above, plaintiff has suffered and will continue to suffer substantial damages to its business in an amount to be established at trial, as well as additional general and special damages in an amount to be established at trial.

28. Plaintiff is informed and believes and on that basis alleges that defendants' acts of copyright infringement, as alleged above, were willful, intentional, and malicious, which further subjects defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to $150,000 per infringement. Within the time permitted by law, plaintiff will make its election between actual damages and statutory damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests the following:

A. For a preliminary and permanent injunction against defendants and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell plaintiff's Photographs described in the Complaint;

B. For an order requiring defendants to account to plaintiff for their profits and any damages sustained by plaintiff arising from the acts of infringement;

C. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the Photographs used in violation of plaintiff's copyrights—including digital copies or any other means by which they could be used again by defendants without plaintiff's authorization—as well as all related records and documents.

D. For actual damages and all profits derived from the unauthorized use of plaintiff's Photographs or, where applicable and at plaintiff's election, statutory damages.

E. For an award of pre-judgment interest as allowed by law;

F. For reasonable attorney fees.

G. For court costs, expert witness fees, and all other amounts authorized under law.

H. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury of all issues permitted by law.

Dated: April 20, 2017

Respectfully submitted,

PERKOWSKI LEGAL, PC

By: /s/ Peter Perkowski
Peter E. Perkowski

Attorneys for Defendant
MICHAEL GRECCO PRODUCTIONS, INC.